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No. 84-1579

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

PRESBYTERY OF ELIJAH PARISH LOVEJOY by its representatives, the commission members named below, and CORTLEY BURROUGHS, TRACY HUSTON, MANLEY MACE, WILLIAM T. HANCOCK, RICHARD D. SHEWMAKER and LORNA WAGNER, and PRESBYTERY OF ELIJAH PARISH LOVEJOY, INC., a Missouri pro forma decree corporation,

Petitioners,

vs.

PAUL JAEGGI, PAUL BARKER, HAROLD BOWERMAN, ROBERT CANFIELD, BEN CARTER, GEORGE DEVLIN, WILLIAM DICK, KARL DOLDE, JIM HYDAR, TERRY JONES, GEORGE LANZ, ROBERT PARKS, FRANK RALL, DAN SMITH, DAROLD STRAND, ARTHUR TAPY, and MEMORIAL PRESBYTERIAN CHURCH OF ST. LOUIS, a Missouri pro forma decree corporation,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. When a state court resolves a property dispute between church bodies on the basis of state law and does not inquire into religious doctrine or polity, does a petition for writ of certiorari involve a substantial federal question?

B. Did the Supreme Court of Missouri in this case violate the Religion Clauses of the First Amendment, as applied to the states through the Fourteenth Amendment, when it used "neutral principles of law"—a doctrine expressly approved by this Court in *Jones v. Wolf,* 443 U.S. 595 (1979)—to resolve a property dispute between church bodies?

PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties. The only corporation among the Respondents, Memorial Presbyterian Church of St. Louis, has no parent companies, subsidiaries or affiliates.

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PAUL JAEGGI, PAUL BARKER, HAROLD BOWERMAN, ROBERT CANFIELD, BEN CARTER, GEORGE DEVLIN, WILLIAM DICK, KARL DOLDE, JIM HYDAR, TERRY JONES, GEORGE LANZ, ROBERT PARKS, FRANK RALL, DAN SMITH, DAROLD STRAND, ARTHUR TAPY, and MEMORIAL PRESBYTERIAN CHURCH OF ST. LOUIS, a Missouri pro forma decree corporation,

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Memorial Presbyterian Church of St. Louis and the other Respondents, named in the caption hereof, respectfully request that this Court deny the Petition for Writ of Certiorari (the "Petition") which seeks review of the judgment of the Supreme Court of Missouri. The opinion of the Supreme Court of Missouri is reported at 682 S.W.2d 465.

JURISDICTION

We respectfully submit that the jurisdiction of this Court does not attach herein. Our argument is presented under "Reasons for Denying the Writ" *infra.*

STATEMENT OF THE CASE

The statement of facts in the Petition contains substantial errors and makes substantial omissions.

The Supreme Court of Missouri recognized that the principal adversaries "in this church property dispute" are the Presbytery of Elijah Parish Lovejoy (the "Presbytery"), and Memorial Presbyterian Church of St. Louis ("Memorial"), a corporation owning and controlling certain church property. (Petitioners' App., A-2). The Presbytery is a member of the United Presbyterian Church in the United States of America ("UPCUSA"), a nationwide religious denomination.[1]

The Supreme Court of Missouri found that Memorial was established in 1864, that in 1866 it "withdrew from the national church and did not reaffiliate with it until 1877," and that "[d]uring the separation Memorial retained all of the church property." (Petitioners' App., A-8, A-9). The Supreme Court of Missouri also found that "[o]n July 21, 1980, at a duly called concurrent meeting of the congregation and corporation of Memorial, a resolution was adopted, by a vote of 153 to 0 with one abstention, to terminate 'the voluntary association which has existed until now' between Memorial and the national church." (Petitioners' App., A-2).

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[1] The Presbytery of Elijah Parish Lovejoy and the UPCUSA no longer exist as such. In May 1983, the UPCUSA (the "Northern Presbyterian Church") merged with the Presbyterian Church in the United States (the "Southern Presbyterian Church") to form the Presbyterian Church (U.S.A.). Thereafter the Presbytery of Elijah Parish Lovejoy merged with its southern counterpart to form the Presbytery of Giddings-Lovejoy.

Almost a year later, on June 20, 1981, the Presbytery purported to replace Memorial's management with its own nominees and purported to take over control of Memorial's property. Memorial ignored these actions, contending that the Presbytery has had no jurisdiction over it since its disaffiliation on July 21, 1980. (Petitioners' App., A-11). The Presbytery filed suit, claiming the property.

The Supreme Court of Missouri examined the deeds to Memorial's property, the terms of Memorial's trust funds, Memorial's charter, the UPCUSA's Constitution (known as the "*Book of Order*"), and Missouri statutes. The Supreme Court of Missouri found that the deeds "name Memorial as grantee and make no mention of the national church," and that, with respect to several trust indentures (perpetual funds created to benefit Memorial and its ministries), none names the national church as a beneficiary. No provision in Memorial's charter or by-laws, said the Supreme Court of Missouri, "is relied upon by the national church to establish its property interest," and "[t]he national church does not claim that any Missouri statute serves to create a trust in its favor with respect to the property in dispute." Thus, "[i]n order for the national church to prevail under the neutral principles approach on the instant record it must do so [if at all] on the basis of the *Book of Order.*" (Petitioners' App., A-17, A-18) (Italics added).

The Supreme Court of Missouri noted that "in 1929 there was an unsuccessful attempt to amend the *Book of Order* so as to require a local church to provide in its articles of incorporation that its property was held in trust for the national church. It was not until May 1981, after Memorial's disaffiliation, that such an amendment was adopted." (Petitioners' App., A-18) (Italics added). The trial court had found that "there was no provision in the *Book of Order* indicating that a local church may not withdraw from the national organization" (Petitioners' App., A-27) (italics added), and the Supreme Court of Missouri reached the same factual result. The Supreme Court of

Missouri examined the *Book of Order* as it existed when Memorial disaffiliated on July 21, 1980, and found nothing that prohibited member churches from leaving the denomination or giving the Presbytery power over disaffiliated churches. (It was not until June 20, 1981, almost a year after Memorial had disaffiliated, that the Presbytery even purported to replace Memorial's management and take over Memorial's property.) The Supreme Court of Missouri also stated that it agreed with the holdings of the New York Court of Appeals and the South Dakota Supreme Court (see our argument *infra*) "that the *Book of Order,* as it existed on July 21, 1980, did not create an express or implied trust in favor of UPCUSA with respect to the property of Memorial." (Petitioner's App., A-19) (Italics added).

REASONS FOR DENYING THE WRIT

A. Because the Supreme Court of Missouri resolved this property dispute between church bodies on the basis of state law and did not inquire into religious doctrine or polity, the Petition for Writ of Certiorari does not involve a substantial federal question.

The Supreme Court of Missouri here expressly followed the guidelines set forth in *Jones v. Wolf,* 443 U.S. 595 (1979), this Court's most recent church property case, and in *Maryland & Virginia Churches v. Sharpsburg Church,* 396 U.S. 367 (1970), an earlier church property case cited with approval in *Jones. In Md. & Va. Churches,* this Court, *per curiam,* dismissed for want of a substantial federal question a case substantially similar to this:

> In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property. 254 Md. 162, 254 A.2d 162 (1969). Appellants argue primarily that the statute, as applied, deprived the General Eldership of property in violation of the First Amendment. Since, however, the Maryland court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question.

396 U.S. at 367-368 (footnotes omitted). The Supreme Court of Missouri in the case at bar and the Maryland Court of Appeals in *Md. & Va. Churches* reached their similar results by examin-

ing precisely the same kinds of evidence and without inquiring into religious doctrine or polity. (Petitioners' App., A-17).

We do not suggest that the Supreme Court of Missouri in the case at bar was unaware of the fact that the First Amendment places broad limits (defined in *Jones v. Wolf*) on the legal rules states may use to settle church property disputes. Its opinion shows a conscious recognition of those boundaries. But that does not mean that the Supreme Court of Missouri decided a federal question. To the contrary, the decision of the Supreme Court of Missouri, like the decision of the Maryland Court of Appeals in *Md. & Va. Churches,* was based entirely on state law. This Court does not grant certiorari to review matters of state law.

B. The Supreme Court of Missouri in this case did not violate the Religion Clauses of the First Amendment, as applied to the states through the Fourteenth Amendment, when it used "neutral principles of law" to resolve a property dispute between church bodies.

It is settled that state courts do not violate the First Amendment when they apply "neutral principles of law" to adjudicate church property disputes. Courts must only avoid inquiry into religious doctrine or polity. The seminal case is *Jones v. Wolf,* 443 U.S. 595 (1979), a dispute involving the Presbyterian Church in the United States (sometimes called the "Southern Presbyterian Church"),[2] a denomination whose internal laws,

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[2] Petitioners' attempts to distinguish *Jones v. Wolf* are groundless. Petitioners state, with no reference to the record, that the Southern Presbyterian Church did not have constitutional provisions present here. While we would be glad to compare specific provisions of the two constitutions, we will not, because the Constitution of the PCUS is not in the record here.

Actually, except for the fact that *Jones v. Wolf* involved a substantial split in the congregation, and this case involves a unanimous congregation, the substantive facts in the cases are similar. For instance,

as described in *Jones v. Wolf,* are substantially identical to those of the UPCUSA in this case. Moreover, this Court noted that one of the "primary advantages" of the neutral principles approach is that it can "accommodate all forms of religious organization and polity." 443 U.S. at 600. Thus "neutral principles" have been employed to resolve property disputes among organizations varying widely in doctrine and polity. Specifically, appellate courts in six states, in addition to Missouri, have used "neutral principles" to resolve property disputes involving the UPCUSA (sometimes called the "Northern Presbyterian Church"). *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church,* No. 36 W.D. App. 1984 (Pa. 1985); *First Presbyterian Church of Schenectady v. UPCUSA,* 62 N.Y.2d 110, 476 N.Y.S.2d 86, 464 N.E.2d 454, *cert. denied,* 105 S.Ct. 514 (1984); *Foss v. Dykstra,* 342 N.W.2d 220 (S.D. 1983); *York v. First Presbyterian Church of Anna,* No. 5-83-0716 (Ill.App., Nov. 9, 1984), *motion for leave to appeal denied,* No. 63128 (Ill. 1985); *Christensen v. Roumfort,* No. 83 CA. 124 (Ohio App., August 29, 1984); *Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal.App.3d 910, 152 Cal.Rptr. 854, *cert. denied,* 444 U.S. 974 (1979).

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in *Jones v. Wolf* the presbytery appointed an administrative commission after the congregation voted to disaffiliate. The commission declared that the congregational minority was the true congregation and attempted to withdraw all authority from the majority. But the congregation ignored the commission's actions and did not appeal to a higher church court, since it had disaffiliated and contended that the presbytery no longer had any jurisdiction over it.

In the case at bar, there was no minority faction loyal to the UPCUSA. Nevertheless, after the unanimous vote to disaffiliate, the Presbytery's administrative commission attempted to withdraw all authority from the church officers. As in *Jones v. Wolf,* the congregation ignored the commission's actions and did not appeal to a higher church court, since it had disaffiliated and contended that the Presbytery no longer had any authority over it.

All seven of these appellate courts upheld the right of a congregation to leave the UPCUSA without forfeiting its property. Petitioners would, in effect, have this Court declare unconstitutional all of the above seven cases—even including the New York and California cases, in which this Court has already denied writs of certiorari—to say nothing of the innumerable cases in many states which have applied "neutral principles" in situations involving the Southern Presbyterian Church and to a variety of non-Presbyterian churches.

The same *Book of Order,* with the exact same provisions, has been in evidence in each of these seven cases, and the Petitioners' arguments are identical to those previously deemed unworthy of certiorari by this Court. For instance, in *First Presbyterian Church of Schenectady, supra,* the UPCUSA's rejected Petition for Writ of Certiorari argued that the New York Court of Appeals violated the denomination's free exercise rights when it refused to enforce the denomination's construction of § 41.15 of the *Book of Order.* Petitioners here use precisely the same argument.

This case involves a written agreement—the *Book of Order.* It has been recognized by appellate courts in all of the above seven states that the *Book of Order,* as it read at the time Memorial disaffiliated, did not forbid member churches from quitting the denomination, and did not contain any language creating a trust in favor of the denomination. In 1929 the General Council of the General Assembly of the UPCUSA proposed that its Constitution be amended to require that the charter of each local church declare "that its property is held in trust under the Constitution of and for [the national church]." This amendment was rejected. Not until May 1981, almost a year after Memorial disaffiliated, was the *Book of Order* amended to contain language of trust and to contain provisions requiring forfeiture of property to presbytery when a congregation disaffiliates. (Petitioners' App., A-9, A-10). Construction of written instruments (as to whether they create a trust, for in-

stance) is obviously a matter primarily for the states. Given the above facts, it cannot be said that the construction independently adopted by these appellate courts in seven states is unreasonable.

The result urged by Petitioners would have itself violated the Religion Clauses. They claim a right to property they have not owned, controlled, or paid for, without warrant in church law. Prior to 1981, there was nothing in UPCUSA church law which forbade unhappy congregations from leaving with their property. To award Memorial's property to the Presbytery would therefore have violated the free exercise rights of Memorial, which had always maintained exclusive ownership of and control over its property, to an extent thoroughly inconsistent with the Petitioners' claims. (Petitioners' App., A-8, A-9, A-10, A-17, A-18). Moreover, such a result would also have violated the Establishment Clause. Had the Supreme Court of Missouri yielded its gavel to Petitioners and deferred to their desires as to the disposition of property belonging to an ex-member congregation, that would have constituted a serious violation of the Establishment Clause.[3] This Court has held that "delegating a governmental power to religious institutions" violates the Establishment Clause. *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 123 (1982).

By employing "neutral principles," the Supreme Court of Missouri avoided all these (and many other) problems. Like the appellate courts in the six other states mentioned above, the Supreme Court of Missouri applied familiar state property law without inquiring into church doctrine or polity. In so doing, the court adhered to the principles set forth by this Court in *Jones v. Wolf*.

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[3] The decision of the Supreme Court of Missouri was not *based* on these constitutional considerations. It was based solely on state law. We mention these points only to show the constitutional problems into which the Supreme Court of Missouri would have plunged itself had it deferred to Petitioners rather than apply "neutral principles."

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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